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DEPARTMENT OF COMMERCE

International Trade Administration

C-570-968

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On December 14, 2015, the United States Court of International Trade (CIT or the Court) sustained the Department of Commerce's (Department's) results of redetermination,<sup>1</sup> which recalculated the subsidy rate for Tai Shan City Kam Kiu Aluminium Extrusion Co. Ltd. (Kam Kiu) in the first administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China,<sup>2</sup> pursuant to the Court's remand order in *Kam Kiu*.<sup>3</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,<sup>4</sup> as clarified by *Diamond Sawblades*,<sup>5</sup> the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending its *Final Results* with respect to Kam Kiu.

EFFECTIVE DATE: December 24, 2015

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<sup>1</sup> See *Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. v. United States*, Court No. 14-00016; Slip Op. 15-138 (CIT December 14, 2015) (*Kam Kiu II*).

<sup>2</sup> See *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (Final Results Decision Memorandum).

<sup>3</sup> See *Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. v. United States*, Court No. 14-00016; Slip Op. 15-21 (CIT March 20, 2015) (*Kam Kiu*).

<sup>4</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>5</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-4793.

SUPPLEMENTARY INFORMATION:

Background

In the *Final Results*, the Department determined that Kam Kiu failed to respond to its request for information regarding the company's quantity and value of imports of subject merchandise to the United States during the review period.<sup>6</sup> The Department therefore found Kam Kiu to be uncooperative and determined that the application of facts available with an adverse inference was appropriate pursuant to sections 776(a)(2)(A) and (C) and section 776(b) of the Tariff Act of 1930, as amended (the Act).<sup>7</sup> The Department assigned to Kam Kiu a rate of 121.22 percent. This rate was based on the application of total adverse facts available (AFA) which the Department determined was corroborated to the extent practicable in accordance with section 776(c) of the Act.<sup>8</sup>

In *Kam Kiu*, the Court held that the Department must, to the extent practicable, corroborate the AFA rate assigned to Kam Kiu by either attempting to corroborate Kam Kiu's ability to benefit simultaneously from the location-specific subsidy programs included in the AFA rate, or adjusting its methodology as applied to Kam Kiu and corroborate its findings under the new methodology.<sup>9</sup> The Court found that the Department did not explain how the final rate of 121.22 percent was related to Kam Kiu, and that such a rate appeared punitive in light of the

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<sup>6</sup> This first administrative review covered the period September 7, 2010, through December 31, 2011.

<sup>7</sup> See Final Results Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies" and Comment 23.

<sup>8</sup> *Id.*

<sup>9</sup> See *Kam Kiu*, Slip Op. at 18-20.

lower rates assigned to the mandatory respondents which were partially based on AFA.<sup>10</sup> The Court further held that the Department failed to corroborate its finding that Kam Kiu could have benefited from the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program, and evidence that the mandatory respondents in the review did not use the program detracted from the Department’s finding.<sup>11</sup>

On remand, the Court instructed the Department to reconsider its corroboration methodology with regard to location-specific subsidy programs included in Kam Kiu’s rate and the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program also included in Kam Kiu’s rate, as well as to explain how the final AFA rate relates to Kam Kiu.<sup>12</sup>

In its final results of redetermination pursuant to *Kam Kiu*,<sup>13</sup> the Department demonstrated that the AFA rate applied to Kam Kiu in the *Final Results* was corroborated to the extent practicable and was relevant to Kam Kiu. However, to comply with the Court’s remand order, under protest, the Department adjusted Kam Kiu’s AFA rate to remove all location-specific subsidy programs aside from programs that Kam Kiu could have used based on its mailing address. The Department further explained its corroboration of Kam Kiu’s ability to use the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program to the extent practicable, and demonstrated that the revised AFA rate of 79.80 percent was relevant to Kam Kiu.

On December 14, 2015, the Court sustained the Department’s final results of redetermination pursuant to remand.<sup>14</sup>

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<sup>10</sup> *Id.*, at 22-23.

<sup>11</sup> *Id.*, at 23.

<sup>12</sup> *Id.*

<sup>13</sup> See Final Results of Redetermination Pursuant to Court Remand - *Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. v. United States*, Court No. 14-00016; Slip Op. 15-21 (CIT 2015), signed August 13, 2015.

<sup>14</sup> See *Kam Kiu II*.

### Timken Notice

In its decision in *Timken*<sup>15</sup> as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s opinion in *Kam Kiu II*, issued on December 14, 2015, sustaining the Department’s final results of redetermination, constitutes a final decision of the court that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

### Amended Final Results

Because there is now a final court decision with respect to the *Final Results*, the Department amends its *Final Results*. The Department finds that the following revised net subsidy rate exists:

Company	Subsidy Rate
Tai Shan City Kam Kiu Aluminium Extrusion Co. Ltd.	79.80 percent <i>ad valorem</i>

Since the *Final Results*, the Department established a new cash deposit rate for Kam Kiu.<sup>16</sup> Therefore, the cash deposit rate for Kam Kiu does not need to be updated as a result of these amended final results. In the event that the Court’s ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to liquidate entries of subject merchandise that were exported by Kam Kiu, and which were

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<sup>15</sup> See *Timken*, 893 F.2d at 341.

<sup>16</sup> See *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78788 (December 31, 2014).

entered, or withdrawn from warehouse, for consumption during the period September 7, 2010, through December 31, 2011, at the revised rate of 79.80 percent *ad valorem*.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 29, 2015.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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